

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MICHAEL FARLEY,)	
)	
Petitioner,)	
)	
v.)	CIV-21-66-R
)	
JEFF DUNKIN, Warden, and JOHN)	
O'CONNER, Oklahoma Attorney)	
General,)	
)	
Respondent.)	

ORDER

Petitioner filed this action seeking a petition for habeas corpus. The matter was referred to United States Magistrate Judge Suzanne Mitchell for preliminary review. On August 18, 2021, Judge Mitchell issued a Report and Recommendation wherein she recommended that the Motion to Dismiss (Doc. No. 17) filed by the Respondent be granted and the petition be dismissed without prejudice. The matter is currently before the Court on Petitioner's timely objection to the Report and Recommendation, which gives rise to this Court's obligation to undertake a *de novo* review of those portions of the Report and Recommendation to which Petitioner makes specific objection.¹ (Doc. No. 28). Upon completion of such review, the Court finds as follows.²

In response to the Report and Recommendation Petitioner requests that the Court issue a stay in this matter to permit him to exhaust his state court remedies, the failure to

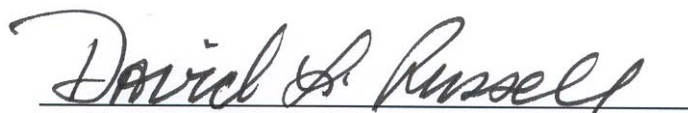
¹ Petitioner filed a "Motion to Object."

² Because Petitioner appears pro se, consistent with *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the Court has given Plaintiff's filings liberal construction.

exhaust having been the basis for Judge Mitchell's recommendation that the petition be dismissed. Petitioner contends that he was unaware of his ability to pursue any state court remedies and that he is in the process of taking steps to pursue those remedies. The Respondent's Brief in Support of the Motion to Dismiss addressed whether Petitioner was entitled to a stay, arguing that this case is not one of those limited cases in which a stay is appropriate. (Doc. 18, p. 21). In response to the Motion to Dismiss Petitioner did not argue that a stay was appropriate and having failed to do so, he has waived the issue. *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived."); *see also United States v. Garfinkle*, 261 F.3d 1030, 1031 (10th Cir. 2001) ("In this circuit, theories raised for the first time in objections to the magistrate judge's report are deemed waived."). Accordingly, the Court rejects Petitioner's argument that the Court should stay the petition pending the exhaustion of his state law remedies.

For the reasons set forth herein, the Report and Recommendation is ADOPTED IN ITS ENTIRETY and the Respondent's Motion to Dismiss is GRANTED. Petitioner's Motion to Object is construed as an objection to the Report and Recommendation and after *de novo* review, the Petition is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED this 28th day of September 2021.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE